

JOHN T. GORMAN
Federal Public Defender
District of Guam

ALEXANDER A. MODABER
Assistant Federal Public Defender
First Hawaiian Bank Building
400 Route 8, Suite 501
Mongmong, Guam 96910
Telephone: (671) 472-7111
Facsimile: (671) 472-7120

Attorney for Defendant
FRANKIE BLAS CASTRO

FILED
DISTRICT COURT OF GUAM
APR - 5 2006
MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,) CR 05-00044
)
Plaintiff,) OBJECTION TO PRESENTENCE
)
) REPORT
vs.)
)
FRANKIE BLAS CASTRO,)
)
Defendant.)
)

RESPONSE TO DRAFT PRESENTENCE REPORT

Defendant, FRANKIE BLAS CASTRO, by and through counsel, Alexander A. Modaber, Assistant Federal Public Defender, respectfully objects to the following findings in the Presentence Investigation Report (PSI).

Paragraph 48: The defendant objects to the two level enhancement pursuant to U.S.S.G. 2D1.1 (b)(1), for possession of a dangerous weapon (a firearm). The probation officer relies on the fact that three firearms were found in the residence during the execution of the search warrant, as the basis for the enhancement. However, the presentence report is absent of any facts

ORIGINAL

that indicate the firearms were in any way connected to the controlled substance violations.

Application note 3 of U.S.S.G. 2D1.1(b)(1), provides that the enhancement for a weapon possession reflects the increased danger of violence when drug traffickers possess weapons. The adjustment should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. For example, the enhancement would not be applied if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet.

The presentence report in paragraph 25, indicates that a long plastic rifle case was discovered in the area behind the headboard of the bed. Inside the rifle case, three firearms were found, that were registered with the GPD Firearms record section, to either the defendant or his wife (the co-defendant). Both the defendant and his wife had valid Guam firearms I.D. cards. All firearms had trigger-lock devices attached. The drugs were found within a desk in the bedroom. See Presentence Investigation Report paragraph 23.

From the facts of this case, it is clearly improbable that the firearms were connected with the controlled substance offense.

CONCLUSION

The defendant respectfully requests this court grant his objection to the presentence investigation report.

DATED: Mongmong, Guam, April 5, 2006.



ALEXANDER A. MODABER
Attorney for Defendant
FRANKIE BLAS CASTRO

CERTIFICATE OF SERVICE

I, RENATE DOEHL, hereby certify that a true and exact copy of the foregoing document was duly mailed and/or hand-delivered to the following on April 5, 2006:

KARON V. JOHNSON
Assistant United States Attorney
Sirena Plaza
108 Hernan Cortez, Ste. 500
Hagatna, Guam 96910

Attorney for Plaintiff
UNITED STATES OF AMERICA

STEPHEN GUILLOT
U.S. Probation Officer
U.S. Probation Office
Districts of Guam and NMI
2nd Floor, U.S. District Court

DATED: Mongmong, Guam, April 5, 2006.



RENATE DOEHL
Operations Administrator

ALEXANDER A. MODABER
Attorney for Defendant
FRANKIE BLAS CASTRO